

OGC REVIEW
COMPLETED

Executive for Personnel and Administration

11 December 1946

Assistant Chief, Finance Division

Appointments for Retired Officers

1. The General Counsel's memorandum of 8 December, relative to the restrictions set forth in the statutes prohibiting the appointment of civilian officers and employees while drawing retired pay under certain circumstances, is attached. The memorandum was forwarded through the undersigned for the purpose of having comments presented as to the type of "temporary" appointments which might be made provided an officer elected to waive his retired pay.

2. A review of the Comptroller General's decisions does not indicate that there has been any clear out interpretation as to the meaning of "temporary" when used in relation to the type of appointment which would permit a person to draw civilian pay although technically coming within the restrictions set forth in 5 U.S.C. 59-a and 5 U.S.C. 42. It is indicated that a person whose appointment was limited to a period not to exceed 30 days could under proper conditions be placed on the pay roll as a "temporary" employee, provided an election was made to waive the retired pay. However, there are a number of factors which would be determining in each case such as the nature of the responsibilities attached to the position, whether or not the duties were similar to those normally included in another position(s), and the conditions under which the employment was accepted, i.e., for the purpose of completing a specified project or piece of work. A person might be given a limited "temporary" appointment which could easily be construed as being an appointment to an "office", if such appointment were extended and became of a continuing nature or if the duties of the position were such as to cause it to fall into a category normally requiring indefinite or regular appointment.

3. It appears that the only conclusion which can be readily drawn is that each case must be settled upon its own merits since, regardless of any theoretical predeterminations, the facts of each case would have to be taken into consideration in determining whether or not there was any substantial non-compliance with the restrictions set forth in the Acts of 1894 and 1932, as amended. It is believed that WAE or consultant types of employment on a short-term or special project basis

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would be appropriate in the event a situation arose where it became necessary to appoint an employee to a "temporary" position where the combined rates of the retired pay and salary of the civilian position would exceed \$3000.00; however, the retired pay would have to be waived.

4. The above statements have been coordinated with the Chief, Personnel Division.

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Assistant Chief
Finance Division

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cc: Mr. Saunders
Mr. Houston

Pay Roll via Ogan

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